



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.2221 of 2018
and
Crl.M.P.(MD)No.988 of 2018

J. Anbunathan

... Petitioner

-Vs-

V.S. Shanmugam

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 03.02.2018 made in Cr.MP(MD)No. 1780/2017 in S.T.C.No. 347/2014 passed by the Learned Judicial Magistrate No. II, (fast track court) at Magisterial Level Madurai by allowing this Criminal Revision petition.

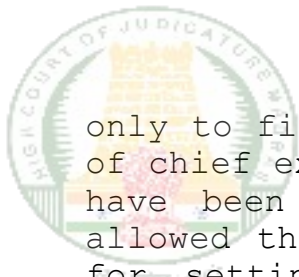
For Petitioners : Mr.V.Om Prakash

For Respondent : Mr.S.Moorthy

ORDER

This petition has been filed challenging the order in Cr.M.P. (MD)No. 1780 of 2017 in S.T.C.No. 347 of 2014 passed by the learned Judicial Magistrate No. II, (Fast Track Court) at Magisterial Level Madurai, dated 03.02.2018, thereby, allowing the petition filed by the respondent/accused under Section 311 of Cr.P.C., to recall himself as D.W.1 for re-examination.

2.The learned counsel for the petitioner would submit that the trial Court, without even going into merits of the pleadings raised in the counter, mechanically allowed the petition without assigning any reason in the impugned order. He would further submit that in the petition for recalling D.W.1 did not even mention the nature of the documents, which is available under the custody of the petitioner and also the learned Magistrate have not stated any specific reason for non-production of the said documents during the examination of D.W.1, on 27.02.2017. The petition has been filed



only to fill up his lacuna which is absolutely omission at the time of chief examination of D.W.1. Therefore, the petition ought not to have been allowed by the trial Court and unfortunately, it was allowed that too without stating any reason. Therefore, he sought for setting aside the order passed by the learned Judicial Magistrate No. II, (Fast Track Court) at Magisterial Level Madurai, in Cr.M.P.(MD)No. 1780 of 2017 in S.T.C.No. 347 of 2014, dated 03.02.2018.

3.Heard the learned counsel for the petitioner. Though the counsel filed vakalat on behalf of the respondent, no one appeared for the respondent.

4.The petitioner is the complainant, who has initiated proceedings as against the respondent herein/accused under Section 138 of Negotiable Instruments Act for the dishonour of cheque. The case has been taken cognizance in the year 2014 and the respondent was examined as D.W.1, on 27.02.2017 itself and subsequently, he was also cross-examined in full and thereafter, the case has been posted for arguments. At this stage, the respondent herein filed a petition to recall himself for further examination. It is seen that in that petition the learned Magistrate did not mention the specific nature of the document and also no reason have been stated, to recall himself for further evidence. It is nothing but only to fill up the lacuna, the petition has been filed for recalling himself. It is not permitted under law and the omission cannot be filled up by re-examination. Therefore, the order passed by the trial Court is liable to be set aside.

5.Accordingly, the order in Cr.M.P.(MD)No. 1780 of 2017 in S.T.C.No. 347 of 2014 passed by the learned Judicial Magistrate No. II, (Fast Track Court) at Magisterial Level Madurai, dated 03.02.2018, is set aside. Considering the case, in S.T.C.No. 347 of 2014, is of the year 2014, the trial Court is directed to complete the trial proceedings within a period of four weeks from the date of receipt of copy of this Order.

6.In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

The Judicial Magistrate No. II,
(Fast Track Court) at Magisterial Level
Madurai,

+1 CC to M/s.V. OM PRAKASH, Advocate (SR-86095[F]

Crl.O.P. (MD)No.2221 of 2018
09.09.2019

Ls

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